

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Apple MID CAL II LLC, a
Delaware Limited Liability Company

Defendant.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Apple MID CAL II LLC, a Delaware Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Apple MID CAL II LLC was the ground lessee of the real property located at or about 39139 Farwell Dr, Fremont, California, upon which "Applebee's Grill + Bar" operates, between July 2019 and August 2020.

1 3. Defendant Apple MID CAL II LLC is the ground lessee of the real
2 property located at or about 39139 Farwell Dr, Fremont, California, upon
3 which “Applebee’s Grill + Bar” operates, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein is
9 responsible in some capacity for the events herein alleged, or is a necessary
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
11 the true names, capacities, connections, and responsibilities of the Defendants
12 are ascertained.

13
14 **JURISDICTION & VENUE:**

15 5. The Court has subject matter jurisdiction over the action pursuant to 28
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California’s Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25
26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to Applebee’s Grill + Bar (“Restaurant”) in July 2019,
28 January 2020 and August 2020 with the intention to avail himself of its goods

1 motivated in part to determine if the defendants comply with the disability
2 access laws.

3 9. The Restaurant is a facility open to the public, a place of public
4 accommodation, and a business establishment.

5 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
6 to provide wheelchair accessible parking in conformance with the ADA
7 Standards as it relates to wheelchair users like the plaintiff.

8 11. The Restaurant provides parking to its customers but fails to provide
9 wheelchair accessible parking.

10 12. A problem that plaintiff encountered is that the parking stalls and access
11 aisles marked and reserved for person with disabilities had slopes that
12 exceeded 2.1%.

13 13. Plaintiff believes that there are other features of the parking that likely
14 fail to comply with the ADA Standards and seeks to have fully compliant
15 parking available for wheelchair users.

16 14. On information and belief the defendants currently fail to provide
17 wheelchair accessible parking.

18 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
19 personally encountered these barriers.

20 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
21 wheelchair accessible facilities. By failing to provide accessible facilities, the
22 defendants denied the plaintiff full and equal access.

23 17. The failure to provide accessible facilities created difficulty and
24 discomfort for the Plaintiff.

25 18. The defendants have failed to maintain in working and useable
26 conditions those features required to provide ready access to persons with
27 disabilities.

28 19. The barriers identified above are easily removed without much

1 difficulty or expense. They are the types of barriers identified by the
2 Department of Justice as presumably readily achievable to remove and, in fact,
3 these barriers are readily achievable to remove. Moreover, there are numerous
4 alternative accommodations that could be made to provide a greater level of
5 access if complete removal were not achievable.

6 20. Plaintiff will return to the Restaurant to avail himself of its goods and to
7 determine compliance with the disability access laws once it is represented to
8 him that the Restaurant and its facilities are accessible. Plaintiff is currently
9 deterred from doing so because of his knowledge of the existing barriers and
10 his uncertainty about the existence of yet other barriers on the site. If the
11 barriers are not removed, the plaintiff will face unlawful and discriminatory
12 barriers again.

13 21. Given the obvious and blatant nature of the barriers and violations
14 alleged herein, the plaintiff alleges, on information and belief, that there are
15 other violations and barriers on the site that relate to his disability. Plaintiff will
16 amend the complaint, to provide proper notice regarding the scope of this
17 lawsuit, once he conducts a site inspection. However, please be on notice that
18 the plaintiff seeks to have all barriers related to his disability remedied. See
19 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
20 encounters one barrier at a site, he can sue to have all barriers that relate to his
21 disability removed regardless of whether he personally encountered them).

22
23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
24 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 23. Under the ADA, it is an act of discrimination to fail to ensure that the
2 privileges, advantages, accommodations, facilities, goods and services of any
3 place of public accommodation is offered on a full and equal basis by anyone
4 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
5 § 12182(a). Discrimination is defined, inter alia, as follows:

- 6 a. A failure to make reasonable modifications in policies, practices,
7 or procedures, when such modifications are necessary to afford
8 goods, services, facilities, privileges, advantages, or
9 accommodations to individuals with disabilities, unless the
10 accommodation would work a fundamental alteration of those
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12 b. A failure to remove architectural barriers where such removal is
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
14 defined by reference to the ADA Standards.
- 15 c. A failure to make alterations in such a manner that, to the
16 maximum extent feasible, the altered portions of the facility are
17 readily accessible to and usable by individuals with disabilities,
18 including individuals who use wheelchairs or to ensure that, to the
19 maximum extent feasible, the path of travel to the altered area and
20 the bathrooms, telephones, and drinking fountains serving the
21 altered area, are readily accessible to and usable by individuals
22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 24. When a business provides parking for its customers, it must provide
24 accessible parking.

25 25. Here, accessible parking has not been provided in conformance with the
26 ADA Standards.

27 26. The Safe Harbor provisions of the 2010 Standards are not applicable
28 here because the conditions challenged in this lawsuit do not comply with the

1 1991 Standards.

2 27. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 28. Here, the failure to ensure that the accessible facilities were available
6 and ready to be used by the plaintiff is a violation of the law.

7
8 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
9 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
10 Code § 51-53.)

11 29. Plaintiff repleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
14 that persons with disabilities are entitled to full and equal accommodations,
15 advantages, facilities, privileges, or services in all business establishment of
16 every kind whatsoever within the jurisdiction of the State of California. Cal.
17 Civ. Code § 51(b).

18 30. The Unruh Act provides that a violation of the ADA is a violation of the
19 Unruh Act. Cal. Civ. Code, § 51(f).

20 31. Defendants’ acts and omissions, as herein alleged, have violated the
21 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
22 rights to full and equal use of the accommodations, advantages, facilities,
23 privileges, or services offered.

24 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
25 discomfort or embarrassment for the plaintiff, the defendants are also each
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
27 (c).)

28 33. Although the plaintiff encountered frustration and difficulty by facing

1 discriminatory barriers, even manifesting itself with minor and fleeting
2 physical symptoms, the plaintiff does not value this very modest physical
3 personal injury greater than the amount of the statutory damages.

4
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
10 plaintiff is not invoking section 55 of the California Civil Code and is not
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act, which provides for actual
13 damages and a statutory minimum of \$4,000 for each offense.

14 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
15 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16
17 Dated: January 29, 2021

CENTER FOR DISABILITY ACCESS

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20 By: 

21 Amanda Seabock, Esq.
22 Attorney for plaintiff
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